

File



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

Application of Dennis M. Passmore for a Permit to
Construct a Boat Ramp, Sugar Camp Lake, Town
of Sugar Camp, Oneida County, Wisconsin

Case No. 3-NO-98-44006UW

FINDINGS OF FACT, CONCLUSIONS OF LAW AND PERMIT

On January 9, 1998, Dennis M. Passmore, 3955 Indian Lake Road, Rhinelander, Wisconsin, 54501, filed an application with the Department of Natural Resources, pursuant to sec. 30.12(3), Stats., for a permit to place a boat ramp on the bed of Sugar Camp Lake, Town of Sugar Camp, Oneida County, Wisconsin, in the SW ¼ of the NW ¼ of Section 1, Township 38 North, Range 9 East.

On July 14, 1998, the Department issued an Order denying the permit application. On August 13, 1999, Dennis M. Passmore, requested a contested case hearing pursuant to sec. 227.42, Stats., regarding the denial by the Department of Natural Resources. By letter dated August 28, 1998, the Department granted the request for a contested case hearing. On January 21, 1999, the matter was referred to the Division of Hearings and Appeals.

Pursuant to due notice hearing was held on April 12, 1999, at Rhinelander, Wisconsin, Jeffrey D. Boldt, administrative law judge (the ALJ) presiding.

In accordance with secs. 227.43 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Dennis and Gretchen Passmore, by

Attorney John H. Schiek
O'Melia, Schiek & McEldowney, S.C.
P. O. Box 1047
Rhinelander, WI 545010-1047

Wisconsin Department of Natural Resources, by

Attorney Michael Scott
P. O. Box 7921
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FINDINGS OF FACT

1. Dennis and Gretchen Passmore, 3955 Indian Lake Road, Town of Sugar Camp, Wisconsin, 54501, completed filing an application with the Department for a permit under sec. 30.12, Stats., to construct a boat-ramp. The Department and the applicants have fulfilled all procedural requirements of secs. 30.12 and 30.02, Stats.

2. The applicants own real property located in the SW ¼ of the NW ¼ in Section 1, Township 38 North, Range 9 East, Oneida County. The above-described property abuts Sugar Camp Lake which is navigable in fact at the project site. Sugar Camp Lake is a seepage lake consisting of two large basins, and contains approximately 545 acres of surface water. (Ex. 20)

3. The applicants propose to construct a private boat ramp consisting of an asphalt driveway approach, concrete wing runners extending into the lake, over an existing wood retaining wall.

4. The purpose of the boat ramp is to gain riparian access to Sugar Camp Lake. There are no public access points on the lake, and the only private launch facility nearby, Burr Valley Condominium, requires a \$15.00 in/\$15.00 out fee.

5. The proposed structure will not materially obstruct existing navigation on Sugar Camp Lake and will not be detrimental to the public interest upon compliance with the conditions of this permit.

6. The DNR originally opposed the issuance of the permit due to concerns about erosion into the lake. Most of the Department's concerns have been eliminated by re-grading that has been done since the DNR site visit. All of the site has been graded to provide for drainage in upland areas away from the lake. (Ex. 10) At the time of the site inspection by Nesta in April, 1998, there were direct detrimental impacts on the water quality of the lake due to run-off, largely from construction of the chalet-style dwelling. (See: Ex. 18) However, subsequent to this time, and apparently unknown to the DNR, the applicant's contractor re-graded the upland areas so that water drained away from the lake. Nesta testified that her concerns regarding direct water quality impacts were "significantly decreased" by the re-grading, and that only direct rainfall on the structure and wall would now be expected to drain into the lake. To ensure that this pattern of drainage remains in effect, the ALJ has included a permit condition requiring maintenance of the gradient away from Sugar Camp Lake.

7. The DNR objected to issuance of the permit in part because of impacts to natural scenic beauty. The Department's concerns for direct impact are as follows: a) the project would involve removal of trees and b) the structure would be visually obtrusive from the public waters of the lake. The applicant demonstrated at hearing that the only trees to be removed would be some small shrubs and a young balsam tree. (Ex. 11) The ALJ finds that, if the cutting of trees is so limited, the project will not have a significant impact on the aesthetics of shoreline cover. With respect to the visibility of the structure from the waters, the structure will be far less obtrusive than several nearby structures. Further, if the concrete runners are poured with dyed-

brown concrete the structure will better blend in with the natural shoreline. Taken as a whole, the direct impacts to natural scenic beauty are not sufficient to warrant denial of the project.

The Department also expressed concerns that there would likely be cumulative impacts to the natural scenic beauty, as other riparians seek similar boat ramps given the dearth of public access points. These concerns are legitimate and reflect the DNR's obligation to consider not just direct impacts at the site, but the lake as a whole and on all of the public waters of the state. However, balancing the rights of the public with the rights of the applicant riparian, the ALJ finds that concerns relating to cumulative impacts to natural scenic beauty are not sufficient to warrant denial of the permit application. First, most direct impacts can be limited at the site by the conditions required in the permit. If that is not the case in other instances, future projects should be denied. Secondly, considering related existing structures near the project site, the applicant's project does not seem out of place. Each future project should be judged on its own merits.

8. The parties agree that there are no significant fish-spawning areas in and around the project site. Further, the project will not have detrimental impacts to wildlife habitat values.

9 The proposed project will not have a detrimental impact upon wetlands or near-shore vegetation.

10. No neighboring riparians or members of the public appeared at hearing to oppose issuance of the permit.

11. The applicants are financially capable of constructing, maintaining, monitoring or removing the structure if it should be found in the public interest to do so.

12. The proposed structure will not reduce the effective flood flow capacity of Sugar Camp Lake upon compliance with the conditions in the permit.

13. The proposed structure will not adversely affect water quality nor will it increase water pollution in Sugar Camp Lake. The structure will not cause environmental pollution as defined in sec. 281.01(10) Stats., if the structure is built and maintained in accordance with this permit.

14. The Department of Natural Resources has complied with the procedural requirements of sec. 1.11, Stats., and Chapter NR 150, Wis. Admin. Code, regarding assessment of environmental impact.

CONCLUSIONS OF LAW

1. The applicants are riparian owners within the meaning of sec. 30.12, Stats.

2. The proposed facility described in the Findings of Fact constitutes a "boat landing" within the meaning of sec. 30.12(3)(a)(5), Stats. The project will not materially impair navigation or be detrimental to the public interest within the meaning of sec. 30.12(3)(b), Stats.

3. The Division of Hearings and Appeals has authority under secs. 30.12 and 227.43(1)(b), Stats., and in accordance with the foregoing Findings of Fact, to issue a permit for the construction and maintenance of said structure subject to the conditions specified.

4. The project is a type III action under sec. NR 150.03(8)(f)4, Wis. Admin. Code. Type III actions do not require the preparation of a formal environmental impact assessment.

PERMIT

AND THERE HEREBY DOES ISSUE AND IS GRANTED to the applicants, a permit under sec. 30.12, Stats., for the construction of a structure as described in the foregoing Findings of Fact, subject, however, to the conditions that:

1. The authority herein granted can be amended or rescinded if the structure becomes a material obstruction to navigation or becomes detrimental to the public interest.

2. The permittees shall waive any objection to the free and unlimited inspection of the premises, site or facility at any time by any employee of the Department of Natural Resources for the purpose of investigating the construction, operation and maintenance of the project.

3. A copy of this permit shall be kept at the site at all times during the construction of the structure.

4. The permit granted herein shall expire three years from the date of this decision, if the structure is not completed before then.

5. The permittees shall obtain any necessary authority needed under local zoning ordinances and from the U.S. Army Corps of Engineers.

6. The permittees shall notify the Water Management Specialist, Liesa Nesta, not less than five working days before starting construction and again not more than five days after the project has been completed.

7. Any area disturbed during construction shall be seeded and mulched or ripped as appropriate to prevent erosion and siltation.

8. No heavy equipment shall be operated in the lake at any time unless written notification is made to the Water Management Specialist, Liesa Nesta, at least five working days in advance.

9. The concrete poured shall be dyed a natural brown color.
10. The construction shall be undertaken using Wisconsin Best Erosion Control Methods.
11. The applicants shall not cut any trees other than those described in the Findings above.
12. The permit-holder is responsible for maintaining the gradient to ensure drainage away from Sugar Camp Lake . The applicant shall install a "bump" at the top of the boat ramp.
13. Acceptance of this permit shall be deemed acceptance of all conditions herein.

This permit shall not be construed as authority for any work other than that specifically described in the Findings of Fact.

Dated at Madison, Wisconsin on April 22, 1999.

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By Jeffrey D. Boldt
JEFFREY D. BOLDT
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.